

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**SPECIAL CIVIL APPLICATION NO. 5415 OF 1998**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed  
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of  
the judgment ?

4 Whether this case involves a substantial question of  
law as to the interpretation of the Constitution of  
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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**SUNDARAMNAGAR CO-OP. HSG. SOC. LTD & ANR. - Petitioner(s)**

**Versus**

**VADODARA MUNICIPAL CORPORATION - Respondent(s)**

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**Appearance :**

Shri B.S. Patel for Petitioner(s) : 1 - 2.

Shri Pranav G Desai for Respondent(s) : 1.,

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**Date : 26/03/2007**

**ORAL JUDGMENT**

The petitioner No.1, a registered cooperative housing society, has come to this Court anticipating that in view of the illegalities committed by the builder or contractor, who had constructed the

property, the respondent-Corporation was likely to take some action against the petitioners and might even disconnect the water supply and the drainage system.

2. Shri Patel, learned Counsel for the petitioners, submits that as and when the money was demanded by the Corporation, the same was deposited and with great efforts, the petitioners could obtain the water supply and the drainage facility. According to the petitioners, a news was published in the newspaper that some complaint was lodged by the respondent-Corporation against the builder, namely, Ashwinbhai Shah, who had constructed the petitioners' building.

3. The submission is that if any illegality is committed by the contractor or the builder, then too, the respondent-Corporation is obliged under the law to issue notice to the petitioners to show cause and after giving due opportunity of hearing if the Corporation comes to the conclusion that any illegal action was taken in obtaining the water supply or connecting the drainage or laying down the drainage line, then only, the Corporation could take an action.

4. Shri Pranav Desai, learned Counsel for the respondent-Corporation, on the other hand, submits that without obtaining the work order from the Corporation and even without giving the name of the contractor or builder, the petitioners started the work of laying down and connecting the drainage line and also connected the water supply pipes. His submission is that instead of 150 – 200 mm diameter required for the drainage/sewage pipeline, the petitioners have used much lower diameter and the same is illegal. His submission further is that the drainage line has been laid at the depth of 1.50 metres while under the rules, it is required to be laid below 3.82 metres of the ground level. His

submission is that because of these illegal acts, the petitioners are not entitled to be heard because they have suppressed all these material facts and have obtained interim orders from this Court.

5. So far as the allegations and counter allegations are concerned, this Court would not be in a position to decide that who is right and justified and who is wrong. However, the Corporation in any case would not be entitled to discontinue the facilities, that is, the drainage connection and the water supply connection, without giving an opportunity of hearing to the petitioners, especially, when the concerned building has as many as 84 flats and almost each is occupied and inhabited.

6. The petition is disposed of with a direction to the Corporation that in case they wish to take any action against the illegal action of the petitioner-society, including the action of the builder/contractor of the petitioners, treating the petitioners vicariously liable for the act of those persons, then, appropriate notice to show cause would be issued and the petitioners would be given sufficient time to file the affidavit, but, shall not be more than one month in any case and after hearing the petitioners, they shall be entitled to pass an order. This order shall be passed by them within one month from the date of submission of the reply to the notice to show cause. The petition stands disposed of with the directions aforesaid. Rule is made absolute to the aforesaid extent only. No costs.

**[R.S.Garg, J.]**

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